

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

STEPHEN HALL and ALLAN INNIS,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

BAYER CORPORATION AND
BAYER HEALTHCARE LLC,
Defendants.

CIVIL ACTION
No. 7:09-3136-HFF

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter came before me on the motion of counsel for Plaintiffs, Stephen Hall and Allan Innis, to dismiss Civil Action Number 7:09-3136-HFF (the “*Hall* Complaint”), **without prejudice**, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

On December 2, 2009, counsel for Plaintiffs Hall and Innis filed the *Hall* Complaint through ECF. Plaintiffs were informed by the Clerk of Court’s office that the *Hall* Complaint was filed in the wrong venue and that a civil action number could not be assigned to the *Hall* Complaint. Plaintiffs subsequently requested withdrawal of the *Hall* Complaint upon the information and belief that a civil action number had yet to be assigned to the *Hall* Complaint.

On January 13, 2010, counsel filed a Complaint captioned *Christopher Spelman and Allan Innis, on behalf of themselves and all others similarly situated, v. Bayer Corporation and Bayer Healthcare LLC* with Civil Action Number 7:10-91-HFF (the “*Spelman* Complaint”). The *Spelman* Complaint is the same action as that filed through the *Hall* Complaint, but Civil Action Number 7:10-91-HFF contains a different named plaintiff. Counsel wishes to pursue the

plaintiffs' causes of action through the subsequently filed and currently active *Spelman* Complaint with Civil Action Number 7:10-91-HFF.

On January 14, 2010, the Clerk of Court's office informed counsel for plaintiffs that Civil Action Number 7:09-3136-HFF had in fact been assigned to the December 2, 2009 filing of the *Hall* Complaint. Defendants were never served with the *Hall* Complaint, and no responsive pleadings have been filed by Defendants in Civil Action Number 7:09-3136-HFF. Dismissal, **without prejudice**, is therefore proper under Rule 41(a) of the Federal Rules of Civil Procedure.

IT IS HEREBY ORDERED this 15th day of January that Civil Action Number 7:09-3136-HFF is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

s/Henry F. Floyd
Honorable Henry F. Floyd

January 15, 2010

Spartanburg, South Carolina